IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11780 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NASIR HUSSAIN MOHMAD SALIM SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 15.3.2003 passed by the Police Commissioner, Ahmedabad City,

against him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 15.3.2003.

2. The grounds served upon the petitioner and placed on record discloses that in all 7 offences came to be registered against the detenu within the span of period from 2.12.2002 to 14.2.2003. The offences came to be registered under Sections 379, 447 and and 114 of the Indian Penal Code. The detaining authority also took into consideration in-camera statements of two witnesses recorded by the proposing authority on 8.3.2003 and verified by the detaining authority on 12.3.2003 disclosing the incidents of 12.2.2003 and 20.12.2002 as to propensity of the petitioner to be a headstrong person and disrupting the public order.

3. Learned Advocate Ms.Subhadra G.Patel for the petitioner and learned AGP Mr.R.M.Chauhan for the respondents were heard at length. Learned AGP has placed on record the affidavit-in-reply of the detaining authority, which is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be disposed of on the ground that whether the detaining authority took into consideration the vital aspect of the matter i.e. whether the petitioner was likely to be released on bail. From the grounds, it is clear that the petitioner was in judicial custody for the crimes registered against the petitioner, and according to the statement made by the learned Advocate for the petitioner, the detenu is under judicial custody on the above said crimes. Apparently, there was no material at all before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail and was likely to be indulged in illegal activities. The facts of the case are, therefore, squarely covered by the decision of the Apex Court in the case of AMRUTLAL AND OTHERS vs. UNION GOVERNMENT THROUGH SECRETARY, MINISTRY OF FINANCE AND OTHERS, reported in AIR 2000 SC 3675. In this view of the matter, the order impugned in this Special Civil Application is required to be quashed on this ground alone.

5. In the result, this Special Civil Application is

allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 15.3.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)